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103. In such cases, by the great weight of authority, the action is denied, generally upon the equitable ground that one who has elected to accept the benefits of a charity thereby releases the benefactor from liability for the negligence of his servant in administering the charity. *Powers v. Mass. Homœopathic Hospital*, 109 Fed. 294. In the principal case the injury was sustained by an outsider, and the court applies the rule *respondeat superior*, holding that there is no difference in such cases between the defendant and any other corporation. For an extended discussion of the principles involved, see 5 MICH. L. REV., pp. 552, 662.

MUNICIPAL CORPORATIONS—ORDINANCES—CONFLICT WITH STATUTES—POLICE POWER.—Statutes of the state of Georgia prohibited the sale of intoxicating liquor and made it unlawful for any person to keep it at any public place or at his place of business. An ordinance of the city of Macon forbade, under a penalty, the maintenance of “blind tigers” and keeping on hand intoxicating liquors for the purpose of illegal sale. Plaintiffs were convicted under the ordinance and sued out writs of habeas corpus, alleging that the city was without authority to pass the ordinance, and that the ordinance was void as attempting to punish a crime already punishable under state law. *Held*, that the city was empowered to prevent the illegal sale of liquor under the general welfare clause of its charter; that the offenses punished under the ordinance were not identical with those made criminal by the statute. *Callaway v. Mims* (1908), — Ga. App. —, 62 S. E. 654.

Under the “general welfare” clause common to most city charters, the city may restrain, under penalty, the illegal sale, and keeping for sale, of intoxicating liquors. *In re Jahn*, 55 Kan. 694, 41 Pac. 956. Ordinances providing for such restraint are upheld under the general municipal police power. *Henderson v. Heyward*, 109 Ga. 373, 34 S. E. 590, 47 L. R. A. 366, 77 Am. St. Rep. 384. And according to some decisions a municipal police regulation may punish acts also made criminal by statute. *Rogers v. Jones*, 1 Wend. 237, 19 Am. Dec. 493. These decisions are not, however, in accord with the weight of modern authority, which holds that a municipality may not, without express legislative authority, legislate in regard to acts already covered by the criminal laws of the state. *Judy v. Lashley*, 50 W. Va. 628, 57 L. R. A. 413, 41 S. E. 197. The court in the principal case adopts this view and then proceeds to uphold the ordinance in question by differentiating between the offense of “keeping liquor for sale” and “keeping it at any public place or place of business,” holding them to be separate acts. This distinction, though close, seems justified by the decisions, and appears to open the only way for the easy suppression of the so-called “blind-tiger,” which is defined in the principal case as “a place where liquors are sold on the sly in violation of law.” *Menken v. City of Atlanta*, 78 Ga. 668, 2 S. E. 559.

RAILROADS—DUTY TO MAINTAIN CROSSING AFTER ELEVATING TRACKS.—The defendant elevated its tracks across Sixty-third street, in compliance with an ordinance of the City of Chicago. The street was lowered five feet and

the tracks raised about seven feet, and the street below was put in proper condition by the defendant. Subsequently, the street becoming in need of repair, the city passed an ordinance requiring the defendant to repair it. On its refusal, mandamus was brought to compel the defendant so to repair. *Held*, not being required by its charter to maintain, but only to restore, a highway intersected, the duty of the defendant was ended when it restored the highway. *People ex rel. City of Chicago v. Ill. Cent. R. R. Co.* (1908), — Ill. —, 85 N. E. 606.

The authorities are almost unanimous in the view that the duty to restore a highway is a continuing one. *Paducah & E. R. v. Commonwealth*, 80 Ky. 147; *Chi., R. I. & Pac. R. v. Moffitt*, 75 Ill. 524; *Southern Ry. Co. v. Morris*, 143 Ala. 628; *Burritt v. N. H., etc., & N. Co.*, 42 Conn. 174; *Cooke v. B. & L. R.*, 133 Mass. 185; *Wellcome v. Inhabitants*, 51 Me. 313; *Minn. v. St. Paul, etc., Ry.*, 35 Minn. 131; *City of Kan. v. Kan. City Belt Ry.*, 102 Mo. 633; *Hatch, Commr., v. S. B. & N. Y. R. R.*, 50 Hun 64. To maintain a crossing is a common law duty and is not abridged by the absence of conditions. *Maltby v. C. & W. M. Ry. Co.*, 52 Mich. 108. Crossings must be maintained according to the needs of the public and changed as necessity may require. *Atch., etc., Ry. v. Henry*, 57 Kan. 154; *Minn. v. St. Paul, etc., Ry.*, supra. The duty to so change is implied. *People v. U. P. Ry.*, 20 Colo. 186. In the principal case the railroad no longer crossed at grade, in which fact it differed from most of the cases above cited. However, in *Hatch, Commr., v. S. B. & N. Y. R. R.*, supra, the defendant constructed its road above the highway, and after thirty years, the space beneath having become inadequate for the increased business, it was required to make the necessary changes, on the ground that the duty to restore is a continuous one. Likewise, where the tracks were lowered and the highway constructed on a bridge above, the railroad was required to maintain such highway. *Burritt v. N. H., etc., & N. Co.*, supra; *Cooke v. B. & L. R.*, supra. The conclusion that the duty to maintain was abrogated by elevating the tracks is therefore not easily reached.

**SALES—CONSTRUCTION OF CONTRACT—TIME OF DELIVERY.**—Defendant sent plaintiff quotations on its salt, stating that no exact date could be guaranteed for delivery, owing to the shipments being made by water. On June 1<sup>st</sup> the plaintiff ordered a cargo to arrive November 1<sup>st</sup> to 10<sup>th</sup>, and on June 11<sup>th</sup> the defendant replied that the order had been entered. Thereafter the plaintiff requested an earlier shipment, to which the defendant answered that it could not set a definite date, but would ship as soon as a boat could be secured. *Held*, that no contract was shown fixing any definite day for delivery, and damages for the alleged breach were refused. *Sumrell & McCoy v. International Salt Co. et al.* (1908), — N. C. —, 62 S. E. 619.

All the correspondence between the parties in this case indicates that some margin was contracted for, owing to the uncertainties of shipments by water. Two weeks one way or the other seem to have been understood by the parties as the limit. This was an order for salt for use in the winter season, and was placed in ample time for delivery by the date speci-